IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2007

CORAM:

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.776 of 1995

Ramanathan Chettiar .. Appellant/Plaintiff

-Vs-

1. Subbaraya Gounder
2. Kuppusamy Gounder .. Respondents/Defendants

APPEAL under Section 100 of the Code of Civil Procedure against the judgment and decree of the Sub-Court, Tiruvannamalai in A.S.No.71 of 1993 and dated 28.02.1994 in reversing the judgment and decree of the Principal District Munsif Court, Tiruvannamalai in O.S.No.379 of 1987 and dated 29.04.1993.

For Appellant : Mr. V.Raghavachari
For Respondents : Ms. Emily Venkatesan, for M/s. T.R.Rajaraman.

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J U D G M E N T

The plaintiff in the Trial Court is the appellant in the above second appeal. The plaintiff filed a suit against the defendants for recovery of the amount under a suit promissory note stated to have been executed by the defendants on 20.06.1981, marked as Ex.A-1, having received a sum of Rs.4,000/-. On 01.06.1984, an amount of Rs.5/- was paid towards the promissory note and an endorsement was also made at the promissory note and according to the plaintiff, the promissory note as well as the endorsement were written by the second respondent. Thereafter, since the amount was not paid, a legal notice was issued on 03.06.1987, marked as Ex.A-3, which was received by the defendants on 05.06.1987 and 06.06.1987 respectively, marked as Exs.A-4 and A-5. The defendants have also given a reply on 10.06.1987, marked as Ex.A-6. While the defendants have admitted the signature in Ex.A-1, their contention is that, on that date no consideration was passed and it was in respect of the earlier dues by renewing the earlier promissory note, Ex.A-1 was signed on 20.06.1981 and according

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to the defendants, it was only Rs.1,500/- which was borrowed earlier. Therefore, it is only the consideration which is questioned. The defendants have also denied the endorsement made at the back of the promissory note and the suit is barred by limitation.

2. The second defendant has also filed a written statement stating that there has been a Panchayat in respect of the payment, on the basis of which on 27.11.1988, the plaintiff has received a sum of Rs.42,000/-, including the amount due under the suit promissory note. It is the case of the second defendant that since the said amount was not paid, the plaintiff has filed some other suits in O.S.Nos.103 of 1987 and 416 of 1987 and on receipt of the said amount of Rs.42,000/-, the plaintiff has agreed to withdraw the said suits and it was based on that belief, the amount was given. Therefore, it is the case of the second defendant that even-though the plaintiff has not kept up his promise, the amount due in respect of the present suit has been paid. The Trial Court, on an appreciation of evidence, has decreed the suit in favour of the plaintiff as against which the defendants have filed the appeal. The First Appellate Court however, reversed the judgment and decree of the Trial Court by allowing the first appeal. It was against the said judgment and decree of the First Appellate Court, the plaintiff has filed the above second appeal.

3. While admitting the above second appeal, this Court has framed the following substantial questions of law:-

> "1. Whether the lower appellate court is right in non-appreciation of the consistent evidence of D.W.3 and its decision in holding that the endorsement in Ex.A-2 as not proved?
> 2. Whether the lower appellate court is right in concluding that the suit promissory note is covered under Ex.B-2 in the absence of concrete proof?
> 3. Whether the lower appellate court is right in placing the burden on the appellants when it is the defendant who approached the Court with a case that the suit promissory note is settled under Ex.B-2?"

4. A reference to the judgment of the First Appellate Court shows that while the defendants have admitted execution of suit promissory note, but set-up the defence that the consideration for the said promissory note has not passed on the said date and it was in respect of the previous amount of Rs.1,500/- and therefore having correctly found that in such circumstances, the

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onus is upon the defendants to prove their plea and also arriving at a conclusion that the defendants have not proved that the suit promissory note was executed only for the consideration of Rs.1,500/-, has however dismissed the suit on the basis that Ex.A-2 endorsement dated 15.06.1984 on the suit promissory note has not been proved and therefore the suit is barred by limitation. The judgments of the Courts below especially by the Trial Court in this regard is clear namely that the witnesses examined on behalf of the defendants namely D.W.3 has admitted that the endorsement found in Ex.A-2 is that of the defendants, in fact, the Trial Court also has analysed that when Ex.A-2 endorsement was made in 15.06.1984, it was the case of the defendants themselves that in the Panchayat, there was a compromise arrived at for the settlement of entire claims, relating to some other suits also the suit amount and that was under Ex.B-2-Muchalika dated 27.01.1988 and therefore by payment of the total amount of Rs.42,000/-, the present suit promissory note amount has also been discharged and in the said circumstances, the Trial Court has correctly come to the conclusion that if really the endorsement under Ex.A-2 was not put by the defendants in 1984, in which event the suit promissory note becomes time barred, there was no necessity for the defendants to accept the payment under Ex.B-2, an amount which includes the amount of suit promissory note. It is on the basis of the said circumstance and also by relying upon Section 69 of the Indian Evidence Act, the Trial Court has come to the conclusion that the endorsement made under Ex.A-2 is that of the defendants and therefore, the suit is not barred by limitation.

5. It is common knowledge that in a suit under promissory note which is covered under the Negotiable Instruments Act, it is not only the signature in the main instrument, but also the other endorsements are presumed to be valid, unless contrary is proved as per Section 118 of the Negotiable Instruments Act. Therefore, it is clear that if it was the case of the defendants that when admittedly Ex.A-1 was executed by them and they only deny the endorsement under Ex.A-2, the onus was on them to prove that what was contained in Ex.A-2 was not that of the defendants.

6. In such circumstances, the finding of the Learned First Appellate Judge that the plaintiff has not taken steps for the purpose of referring the signature under Ex.A-2 to a handwriting expert is not sustainable. This is relevant because on the next issue in respect of the discharge of the liability of the defendants under the suit promissory note, the First Appellate Court has placed reliance on Ex.B-2-Muchalika, stated to have been entered based on a Panchayat and concluded on 27.01.1988 and on that basis has come to the conclusion that the liability

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of the defendants under Ex.A-1 has been discharged and as far as the other two suits are concerned, they were admittedly not against the defendants in the suit and in such circumstances again holding that witnesses under Ex.A-2 endorsement have not been examined by the plaintiff and therefore decided the case against the plaintiff is not in accordance with law.

7. Therefore it is clear that the decision of the First Appellate Court in not appreciating the independent witness, D.W.3, and the liability of the suit promissory note having been discharged as per Ex.B-2 but imposing the responsibility on the plaintiff to prove the endorsement under Ex.A-2 are all unsustainable and against the provisions of Negotiable Instruments Act, especially in the circumstance that there was no proof to show that Ex.B-2-Muchalika includes the liability of the suit promissory note.

8. It is also relevant to point out that when the suit itself was laid not only based on Ex.A-1, but also the endorsement under Ex.A-2 and stating that in view of the endorsement, the suit is well within the period of limitation, the defendants in the written statement have only chosen to question the quantum of the amount of promissory note.

9. In the result, the above second appeal stands allowed with proportionate costs and the judgment and decree of the First Appellate Court in A.S.No.71 of 1993, dated 28.02.1994, on the file of the Sub-Court, Tiruvannamalai, is set-aside.

Sd/
Asst.Registrar

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Sub Asst.Registrar

srk

To
1. The Subordinate Judge, Tiruvannamalai
2. The Principal District Munsif, Tiruvannamalai
3.The Record Keeper, VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate Sr 21326
+1cc to Mr.T.R.Rajaraman, Advocate Sr 21658

JRG (CO)
km/4.6.

S.A.No.776 of 1995

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